EXTENSION OF RIGHTS FOR BUILDING BY THE LIMITED LIABILITY REVIEWED FROM LEGAL CERTAINTY, JUSTICE AND TOWARDS SUSTAINABLE INVESTMENTS AND PEOPLE'S WELFARE

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EXTENSION OF RIGHTS FOR BUILDING OF THE LIMITED LIABILITY COMPANY VIEWED FROM THE PRINCIPLES OF LEGAL CERTAINTY, JUSTICE AND SUSTAINABLE INVESTMENTS TOWARDS PEOPLE'S WELFARE

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ABSTRACT

UUPA HGB regulates the extension of Article 35 paragraph (2), which contains fuzziness norm. The word "may" in norms in the article lead to different interpretations, so contrary to the provisions of Article 5 of Law No. f letters. 12 in 2011, which ordered that in every formation a good rule, one of the requirements that must be met is "clear statement". Regarding the subject of HGB stipulated in Article 36 paragraph (1) UUPA, which is a. Citizens, and b. legal entities established under Indonesian law and domiciled in Indonesia. Legal entity used in this study is a limited liability company (PT). In that regard there are three problems examined, namely: How does extension HGB were arranged? How to interpret the provisions of Article 35 paragraph (2) if it is associated with UUPA kepastia principles of law, keadian, and continued investment towards social welfare, as well as the legal consequences for HGB PT when the extension is rejected? Theory is used to analyze the hierarchy theory Norma (stuffen theory), the theory of legal certainty, justice theory, and the theory of the Welfare State, while the research method used in accordance with the normative legal research is a method of approach to legislation (statute approach), approaches the concept (conceptual approach), and analytical approaches (analytic approach), with the source material in the form of the law of primary legal materials, secondary and tertiary. Once analyzed, the conclusion is as follows: extension HGB above TN stipulated in Article 35 paragraph (2) UUPA conjunction with Article 26 paragraph (1) 1996 PP 40 in conjunction with Article 40 PMNA / KBPN 9, 1999, while the extension of HGB over HPL occurred after the approval of the shareholders of HPL stipulated in Article 35 paragraph (2) UUPA Article 26 paragraph (2) 1996 PP 40 in conjunction with Article 45 PMNA / KBPN 9, 1999. HGB on land ownership is set to be extended, but in accordance with Article 29 paragraph (2) PP 40 epidemic in 1996 may be updated. Interpret the provisions of Article 35 paragraph (2) UUPA should always be associated with Article 2 (3) and Article 3 of the Capital Market Law UUPA. In terms of HGB expires, the land is returned to the States when coming from TN or holder if

the land comes from HPL HPL, and PT was no longer able to use the land as a place of business (investing). If PT does not get land to run his business (investment), then there will be other legal consequences, namely: PT dissolution, and laid off employees, which will lead to other consequences, such as economic and social consequence.

Key Words : Extension Of Rights For Building, Company Limited Liability, Legal Certainty, Sustainable Investments, People's Welfare

INTRODUCTION

One purpose of the establishment of the Republic of Indonesia's independence was for the welfare of the people of Indonesia. The goal of the country is contained in the IV paragraph of the Preamble of the Constitution of the Republic of Indonesia Year 1945 (hereinafter referred to as the 1945 Constitution). Efforts to bring it further is elaborated in Chapter XIV of the 1945 Constitution, with the title of National Economy and Social Welfare through Article 33 which consists of five paragraphs, and Article 34 consists of four verses.

The provisions of Article 33 Indonesia 1945 Constitution, particularly paragraphs (2) and paragraph (3) set everything connected with public, whether it's in a form of production branches, as well as earth, water and natural resources, they are not limited to, controlled by the state, which has only one purpose and that is for the welfare of the people of Indonesia. In this case, it is the state that holds the entire Indonesia and its contents. Tenure should be used to the maximum benefit of the people of Indonesia sustainably. The word sustainable is meaningful, that nature should not be damaged, so the advantage can be taken continuously from generation to generation.

Under the provisions of Article 33 paragraph (3) of the 1945 Constitution further it was enacted Law. No. 5 Year 1960 concerning Agrarian Principles (LN. 1960-104, TLN. 2043), hereinafter referred to as Land Law. Land Law organizes all kinds of land rights in Article 16 paragraph (1), which include Property, leasehold, Right to Build (Rights For Building), and the right to use, while the extension of Rights For Building stipulated in Article 35 paragraph (2) as follows; on the request of the right holder, and by looking at the purpose and circumstances of the buildings, the period specified in paragraph (1) may be extended by a maximum of 20 years.

The word "may" in the provision of Article 35 paragraph (2) of Land Law has a meaning that is not clear, because the word "may" has no final meaning. The word "may" in the norm do have final meaning if it is followed by other words, like the word "rejected" or "granted". After being followed by the words, the word "may" will be "irresistible" or "be granted". Thus the word "May" in the norm has a double meaning, so that it becomes the fuzzy norm/not clears.

Norms that lead to more than one interpretation, the norm is not in accordance with the provisions of Article 5 letter f Law. No. 12 of 2011 on the Establishment of Legislation (LN. 2012-82. TLN. 5234) hereinafter referred to as Act 12 of 2011. The provisions of Article 5 letter (f) orders that the formation of legislation should be based on the principle of forming a good rule, one of which is "clear statement". Complete formulation of Article 5 letter f is as follows: In the form of legislation should be based on the principle of formation of legislation is good, which includes: a. clarity of purpose; b. institutional or official right c. correspondence between types, hierarchy and substance d. can be implemented e. usefulness and effectiveness f. clarity of formulation, and g. openness. Further explanation of the letter (f) in the formula is as follows: The term "formulation clarity principle" is that any legislation must meet the technical requirements of drafting legislation, systematic, choice of words or terms, as well as the statutory language is clear and easy to understand so as not to cause a wide range of interpretations in the implementation. In addition, the vagueness norms may create legal uncertainty and injustice, when in the implementation it is apparently ignoring the existence of Rights for Building that is still eligible.

Ignoring the existence of eligible Rights For Building means, in its implementation turns that Rights For Building that are still eligible for extension is not granted, on the other hand Rights For Building that are not eligible for extension is granted. This happens because of the provisions of Article 35 paragraph (2) Land Law contains fuzzy norms, namely the word "may" in the norm. The word "may" provide opportunities to the authorities (government officials) to make a decision to accept or reject as appropriate to government officials themselves without considering the actual needs should take precedence, namely the need for the welfare of the people.

Regarding the subject of the rights of the Rights For Building subject to the provisions of Article 36 paragraph (1) Land Law , namely: a. Citizens of

Indonesia , and b. legal entities established under Indonesian law and domiciled in Indonesia. Thus the ones who can have the Rights For Building on land are just citizens and legal entities established under Indonesian law and domiciled in Indonesia, so that if there is a subject of rights in addition to the two mentioned above has Rights For Building land, it is being contrary to the Land Law.

In addition to being the basis for the legal regulation of land through agrarian especially Land Law, Article 33 Indonesia 1945 Constitution was also the basis for the regulation of investment, both foreign direct investment and domestic investment. Investing regulated by Law no. 25 of 2007 on Investment (LN. 2007-67, TLN. 4724), hereinafter referred to as the Capital Market Law. According to Article 3, paragraph (1) of Capital Market Law, among others, stated that the investments held by the principle of legal certainty, efficiency equitable, and sustainable. While subsection (2) asserts among other things, that the investment intended to create jobs, promote sustainable economic development, encourage community economic development, and improve the welfare of the community. Thus, the investments made must have principles and objectives as set out in Article 3 paragraph (1) and (2) the Capital Market Law, and for investments that are already running, if it meets the requirements, their existence should be maintained.

Investments or often referred to as an investment are under two forms, the first indirect investment and second direct investment. Indirect investment or portfolio investment is carried out through capital market instruments securities, such as stocks and bonds, while foreign direct investment is a form of investment by building, purchase total, or acquire companies.[1] In indirect investment, investor objectives are not set up a company, but only buy shares for the purpose of resale. Investors aim here is to obtain the maximum results with the span of time that is not too long it will be able to enjoy the benefits. In other words, in such investments, what is expected by investors is capital gains, meaning that the income from the difference between the buying and selling of shares on the stock exchange. In contrast to indirect investment, direct investment, investors must be physically present to conduct business, investors

[1] Panji Anoraga, *Perusahaan Multinasional dan Penanaman Modal Asing,* (Semarang: Pustaka Jaya, 1994), hlm. 46.

should rather set up a company to run businesses investment.[2]

Foreign direct investment (direct investment) which requires investors founded the company, resulting that investors need the land as a place of establishment of the company. Moreover after the company stands, it will need manpower to conduct the efforts of the company. Thus direct investment will provide benefits for the people as it can create jobs, therefore also benefits the State, because it does not need to think about employment for most people. After the efforts made by the company in direct investment is running, the workers had a wage (income) that can be used by them to meet the needs of daily life such as food and clothing, which can be purchased from the vendors, consequently the State may receive income from the taxes paid by the investor. Thus, direct investment can cause multiplier effect, which led to the real sector to move and can cause people welfare, so with the direct investment of all parties, investors, the people, and the State can receive benefits.

Investment capital (investment) is not only done through individual entities (such as trading business, stores, shops, etc.), or a business entity that is not a legal entity (such as partnership firms, limited partnership/CV), but also through business entity in the form of legal entity (such as a limited liability company, cooperatives, foundations, state/state-owned enterprises/ enterprises, regional companies/owned enterprises/enterprises).[3] From those forms of business entity, which is associated with this research is a business entity incorporated and more specifically is a Limited Liability Company (LLC). Researcher used Limited Liability Company in this research because of the many business entities in the form of a legal entity, Limited Liability Company the most widely used by the community and because Limited Liability Company is a legal entity, then it is the subject of law. Limited Liability Company here is company stipulated in Law no. 40 of 2007 on Limited Liability Companies (LN. 2007-106, TLN. 4756). Thus, in this study the right subjects of the Rights For Building is an Indonesia-based Limited Liability Company, since the Limited Liability Company is a legal entity incorporated under the laws of Indonesia, while the citizens as subjects of Rights For Building is not an object of study.

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[2] Sentosa Sembiring, *Hukum Investasi,* (Bandung: CV. Nuansa Aulia, cetakan I, Juli 2007), hlm. 70-71.

[3] R. Djatmiko D., *Pengetahuan Hukum Perdata dan Hukum Dagang,* (Bandung: Angkasa, 1996), hlm. 38.

Problem Formulation

Based on the background of the problems mentioned above, which are at issue in this research is: How is the extension of Rights for Building arranged? How to interpret provision of Article 35 paragraph (2) Land Law if it is associated with the principle of legal certainty, justice and sustainable investment towards social welfare, as well as the legal consequences for Rights For Building for Limited Liability Company if the extension is denied?

Research Methods

This research is normative legal study that is a scientific procedure to find the truth by logic of the normative legal science. In this research, particularly with regard to the presence of fuzzy norm in Article 35 paragraphs (2) of Land Law. In that regard, this study uses the approach of legislation statute approach, conceptual approach, the approach to the concept of land rights and investment, and analytical approach, the approach is to analyze the material legal materials that have been obtained. Legal materials used are of primary legal materials, such as legislation on Rights For Building (Land Law, Government Regulation 40 year 1996 and Minister Of Agrarian Regulation/Head National Land Board No. 9 of 1999) and investment (Capital Market Law), secondary legal materials such as library materials containing notions of Rights For Building extension and current investment, and tertiary legal materials in the form of general and legal dictionaries.

DISCUSSION

Rights for Building for Limited Liability Company in theoretical perspective

- **Theory of Classes Norm *(Stuffen theory)***

Hans Kelsen divides levels of legislation that arranged from the most abstract to the most concrete level.[4] Hans Nawiasky developed a hierarchy of legislation, namely the theory of building the rule of law levels *(die Theorie von der stufenordnung theory)*. This theory states that the highest norms specific to the legal norms of state sub-system is called *staatsfundamentalnorm* (fundamental norm of the State).[5] When the two opinions above are compared to the pattern of the system of legal norms

[4] Hans Kelsen, *Introduction To The Problem of The Legal Theory,* Translated by Bonnie Litschewski Paulso and Stanley L. Paulson, (Oxford: Clarendon Press), hlm. 63-68. Hans Kelsen, *The Pure Theory of Law,* Translated by Max Knight (London: University of Califormia Press, 1970), hlm. 221-229. Hans Kelsen, *General Theory of Law and State,* translated by Anders Wedberg, (New York: Russel & Russel, 1973), hlm. 124-131.

[5] Zoelfirman, *Kebebasan Berkontrak versus Hak Asasi Manusia: Analisis Yuridis Hak Ekonomi, Sosial, dan Budaya,* (Medan: USU Press, 2003), hlm. 20.

of the Republic of Indonesia, you will see the reflection of the two systems of norms.[6] In the system of legal norms of the Republic of Indonesia, the legal norms in force on a system that is layered and tiered as well as groups. A norm is always sourced and based on the basic norm (*staatsfundamental* norm) Pancasila, while the 1945 Constitution is the fundamental law.

Development of national law in a country like Indonesia, the current development is formally complying with the provisions of Law 12 of 2011 on the establishment of legislation, namely Article 2 of Law No. 12 of 2011 states: "Pancasila is the source of all sources of state law." Article 7 paragraph (1) Type of Regulation Legislation hierarchy consists of: a. 1945 constitution; b. Resolution of People's Consultative Assembly c. Law/Central Government Regulation d. Government Regulation e. President Regulation f. Regulation of Provincial; g. Regulation of District/City.

- **Theory of Legal Certainty**

Legal certainty contains two terms, the first rules of a general nature to make people aware of what actions should or should not be done, and second, in the form of legal security for individuals from abuses by the government as a general rule that people can see what is allowed to be imposed or carried out by the state against the individual. Rule of law not only in the form of the articles in the law, but also the consistency of the judge's decision to similar cases that have been decided upon.[7] Legal certainty is a judiciable protection against arbitrary action, which means that someone will be able to obtain something that is expected in certain circumstances.[8] According to Scheltema, the elements of the rule of law, including: 1) the principle of legality, 2) the existence of laws that regulate the actions authorized in such a way, so that people can know what to expect, and 3) the law should not apply retroactively; 4) court that is free from the influence of other powers.[9]

- **Theory of Justice**

John Rawls argues, justice as fairness,[10] of which the main subject is the basic structure of society, or more precisely how the major social

[6] Maria Farida Indrawati Suprapto, *Ilmu Perundang-undangan,* (Yogyakarta: Kanisius, 1996), hlm. 34.

[7] Peter Mahmud Marzuki, *Pengantar Ilmu Hukum,* (Jakarta: Kencana Prenada Media Group, 2008), hlm. 158.

[8] Sudikno Mertokusumo, *Mengenal Hukum, Sebuah Pengantar,* (Yogyakarta: Liberty, 1999), hlm. 145.

[9] Ida Bagus Putu Kumara Adi Adnyana, *Penjabaran Nilai-nilai Pancasila dalam Materi Muatan Peraturan Perundang-undangan,* (Malang: Disertasi Program Doktor Ilmu Hukum, Fakultas Hukum, Universitas Brawijaya, 2010), hlm. 95.

[10] John Rowls, *A Theory of Justice,* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1971), hlm. 3.

institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. In other words, justice as fairness contains principles, that people that are free and rational will develop their interests, should obtain an equal footing at the time it starts, and it is a fundamental requirement for them to enter society they wish.[11] On one side, fairness is a value that directs each party to provide the protection of the rights guaranteed by law (right element); while on the other hand, this protection should ultimately provide benefits to individuals (elements of benefits).

According to Andre Ata Ujan, in constructing a theory of justice, it is expected to ensure a fair distribution between the rights and obligations in an orderly society. This condition can be achieved or formulated if there is initial conditions that guarantee the fair a process called "original position", which is characterized by the principles of liberty, rationality and equality, or the so-called rational and neutral. In other words, the original position as the initial status quo who asserts that fundamental agreement reached fairly.[12] Thus justice is related to the right. Only in conceptual justice, rights cannot be separated with its antinomy partner, or obligation. As principle of Kemanusian *yang adil dan beradab* "just and civilized humanity", unequivocally mandates harmony between rights and obligations as human beings living in society. Justice can only stand upright in a civilized society, or vice versa, only in a civilized society justice is appreciated. So the justice in question is in the context of UUPAance of values of existing antinomies covering all areas, both in the ideological, political, economic, social, cultural, defense and security. Only then national goals will be met, creating a just and prosperous society. Fair in prosperity and prosper in justice.[13]

- **Theory of Welfare State**

Welfare of the people is the responsibility of the States; it is reflected in the content of Article 33 paragraph (3) and Article 34 of the 1945 Constitution. The provisions of Article 33 and 34 of the 1945 Constitution is a constitutional basis for the state to intervene in the economy. State intervention in the economy is devoted to a market in the welfare state (welfare state). Welfare state is a form of government that

[11] E. Fernando M. Manullang, *Menggapai Hukum Berkeadilan, Tinjauan Hukum Kodrat dan Antinomi Nilai,* (Jakarta: Penerbit Buku Kompas, Januari 2007), hlm. 99.

[12] Andre Ata Ujan, *Keadilan dan Demokrasi, Telaah Filsafat Politik John Rawls,* (Yogyakarta: Kanisius, cetakan ke-5, 2005), hlm. 25-26.

[13] Dardji Darmodihardjo dan Shidarta, *Pokok-pokok Filsafat Hukum, apa dan bagaimana Filsafat Hukum Indonesia,* (Jakarta: PT. Gramedia Pustaka Utama, cetakan kedua, 1996), hlm. 167.

assumes that the state is responsible for ensuring a minimum standard of living for all its citizens.[14]

In terms of economic, welfare is the fulfillment of basic needs/premiere of each individual, in the form of meeting the needs of food, clothing and housing. But if that's the only requirement is met, then life will always stagnant, there will be no progress in society, so that the state will always be a third country. To promote a country, the people should have adequate proficiency in science and healthcare stocks. As expressed by Widjojo Nitisastro, that there are three basic human needs are selected for equality, i.e. food, clothing, and housing. In addition to the distribution of material needs, access to education and health services is a requirement that needs to be put in equality.[15]

- **Rights for Building**

Rights For Building as referred to in Article 35 paragraph (1) Land Law, is the right to establish and have buildings on land of not his own, with a maximum period of 30 years. With the phrase "establish and have buildings" means buildings built on the land, are the property of the builder. With the phrase "the land that was not his own", meaning the land where he erected the buildings is owned by other parties. That means the owner of the building is not the owner of the land, so the land owner is not the owner of the building. While the last clause "for a period of 30 years", is a time limit for the owner acquired the buildings for the use of the buildings that he built on land that was not his. The time period can be extended, with conditions as specified in Article 35 paragraph (2) land law. The terms are intended, namely: at the request of the right holder, and keeping in mind the needs and circumstances of the buildings, the period specified in paragraph 1 may be extended by a maximum of 20 years.

Rights for Building are transferable, meaning that Rights for Building can be sold, assigned, or bequeathed. This was reflected in the provisions of Section 38 Land Law: (1) Rights for Building include the terms of the gift, as well as any transfer and abolition of this right shall be registered under the provisions referred to in Article 19, (2) registration referred to in paragraph (1) is strong tool of evidence regarding the abolition of the Rights for Building and the validity of the transfer of rights, except in the case of rights was clear because the period is over. Article

[14] Johnny Ibrahim, *Hukum Persaingan Usaha, Filosofi, Teori dan Implikasi Penerapannya di Indonesia,* (Malang: Bayumedia Publishing,cetakan kedua,April 2007),hlm. 32.

[15] Widjojo Nitisastro, *Pengalaman Pembangunan Indonesia, Kumpulan Tulisan dan Uraian Widjojo Nitisastro,* (Jakarta: Penerbit Buku Kompas, Januari 2010), hlm. 438.

39 Land Law determines: Rights for Building can be used as collateral when burdened with mortgage debt. There are differences in terms of the formulation in Article 35 paragraph (1) Land Law with Article 38 and Article 39 of the Land Law. If Article 35 determines the right to set up and have the buildings on land not his own, that the building is the owner of the building but the land is not his. While Article 38 and 39 of the Law determined that Rights for Building are transferable and usable collateral, it means that Rights for Building are the material right.

Under the provisions of Article 38 and 39 Land Law and by ignoring the necessary provisions of Article 35 paragraph (1) of Land Law it can be ascertained, that the Rights for Building is *zakelikerecht* material right, because of the characteristics of the Rights for Building is similar to the material right characteristics, which can be transferred and used as collateral by the right holder.

- **Sustainable Investment**

Explanation of Article 3 paragraph (1) letters g Capital Market Law determines: What is meant by "sustainable principle" is a principle which is planned to seek the gradual development through investment to ensure the welfare and progress in all aspects of life, both for the present and future. Thus the meaning of sustainable investments is: investments made in a planned manner to pursue the gradual development through investments in order to ensure the welfare and progress in all aspects of life, both for the sake of present and future generations the benefit.

Extension of the Rights for Building with legal Certainty, equitable, and sustainable for Limited Liability Company

- **Rights for Building Extension Settings**

Giving Rights for Building by Land Law is not regulated by the word "gift", but arranged with the word "happen". The provision is contained in Article 37 of the Land Law, namely: Rights for Building occurs, a) on land directly controlled by the State Government for setting b) in respect of land ownership as an authentic form of agreement between the owner of the land in question by those who would acquire it Rights for Building, intending to cause rights. The extension of Rights for Building is stipulated in Article 35 paragraph (2) Land Law. Looking at the provisions of Article 37 of the Land Law, the Rights for Building can only arise from the state land and land ownership. In case there is Rights for Building arising from land

other than state land and land property rights, then it is against the Land Law.

Government regulation 40 of 1996 regulates the Rights for Building in Chapter III on the Granting of Rights for Building. Article 21 determines: Land that can be provided by Rights for Building is: a. State Land b. land rights management, c. land property rights. Article 22 determines: 1) Rights for Building of State Land is given by the decision granting by the Minister or his representative; 2) Rights for Building over Land Rights Management is given to the decision by the Minister or officials designated by the holder of Land Rights Management proposal; 3) provisions on the procedures and proposal requirements and provision of Rights for Building over Land Rights Management of State Land and further regulated by Presidential Decree. Regarding the extension of Rights for Building stipulated in Article 25 paragraph (1) Regulation 40 of 1996, as follows: Rights for Building as referred to in Article 22 provided for a maximum period of 30 years and may be extended for a maximum period of 20 years.

Reading the provisions of Article 21 of Regulation 40 of 1996 was the provision is contrary to the provisions of Article 37 of the Land Law. Article 37 Land Law determine Rights for Building can only come from State Land and property rights, while Article 21 of Regulation 40 of 1996 determines Rights for Building can arise from State Land, Land Rights Management, and property rights. It is wondered, where government regulation 40 of 1996 is getting Land Rights Management, because Land Law of which is the source of government regulation 40 in 1996, was not familiar with Land Rights Management . Additionally in accordance with the provisions of Article 22 paragraph (3) government regulation 40 1996, procedures and requirements for requesting and providing the Rights for Building over State Land and on Land Rights Management further regulated by Presidential Decree. The authors did not find a decree in question; the authors find only Minister of Agrarian Regulation/Head National Land Board 9 of 1999. For the sake of legal certainty the said decree should be issued.

Minister of Agrarian Regulation/Head National Land Board 9 of 1999 regulate the procedure of Rights for Building in Article 33 paragraph (1) as follows: the application for Rights for Building should be submitted in writing. Article 35 determines as follows: Rights for Building application submitted to the Minister through the local Chief of the Land Office (Kakantah). Regarding the extension of Rights for Building procedures are set forth in Article 40, as

follows: the duration of Rights for Building may be extended or the rights may be renewed.

Concerning the subject of Rights for Building referred to in Article 36 paragraph (1) of Land Law, as follows: those can have Rights for Building are: a. Citizens, and b. legal entities established under Indonesian law and domiciled in Indonesia. Also in 1996 Government Regulation 40 years 1996 subject of Rights for Building is determined in Article 19, namely: to be the holder of Rights for Building is: a. Citizens, and b. legal entities established under Indonesian law and domiciled in Indonesia. Similarly Minister Of Agrarian Regulation/Head National Land Board 9 year 1999 determine the subject of Rights for Building in Article 32, namely: (1) Rights for Building can be given to: a. Citizens, and b. legal entities established under Indonesian law and domiciled in Indonesia. Of the three settings on the subject of Rights for Building is no difference, either in Article 36 paragraph (1) of Land Law, as well as Article 19 of Government Regulation 40 of 1996 and Section 32 Minister Of Agrarian Regulation/Head National Land Board 9 year 1999, so Rights for Building should only be owned by citizens and legal entities established under Indonesian law and domiciled in Indonesia.

Reading these provisions, it can be seen in the following: it turns that the application of Rights for Building should be submitted in writing to the Minister through the local Chief of the Land Office. After a period of Rights for Building is over, it can be extended and refurbished, and Rights for Building can only be owned by citizens and legal entities established under Indonesian law and domiciled in Indonesia.

- **Interpreting the Provisions of Article 35 Paragraph (2) Land Law and Its Legal Consequences If the Extension is rejected**

The words "public welfare" is found both in Land Law and the Capital Market Law. Land Law associate welfare with the goal of land ownership, as defined in Article 2 paragraph (3), namely: Authority which is based on controlling right of the State referred to in paragraph (2) of this article is used to achieve the maximum benefit of the people in terms of nationality, welfare and independence in the community and the state laws of Indonesia which is independent, sovereign, just and prosperous. While Capital Market Law is linking welfare (community) with the purpose of investment, as defined in Article 3, paragraph (2), namely: the implementation of the investment objectives, are among others, (h)

improving the welfare of the community. Thus, both land ownership and investment by Land Law according to Capital Market Law equally aims to "public welfare".

Welfare of the people when associated with the provision of Article 35 paragraph (2) Land Law, it would need to be interpreted as follows:

a. Throughout the clause "At the request of the right holder...". In this case the right holder is required to apply for an extension of Rights for Building on the land. This provision is absolute terms, because Rights for Building is a gift, so it's like a gift is usually preceded by a request/petition.
b. Throughout the clause "... and keeping in mind the needs ...” This norm does not expressly specify the purpose of the question. Who is the intended purpose of the norm? Is it the purpose of the rights holders, the state purpose or purposes of other parties? If the question is the purpose of the right holder, the holder will need it, so he applied for an extension of their rights, if the rights holders do not require, the right holder may not apply for renewal. Conversely, if the question is the purpose of the state, it needs to be clarified, what needs is meant by that. It would be more problematic if the question is the purpose of a third party, because of the possibility of such third party is a business competitor of the right holder, so that the third party is certainly object to the extension his right is granted.

   Rights for Building is a land rights, the purposes referred to in this case is the necessity of appropriate land tenure under Article 2 paragraph (3) of Land Law, which is for the welfare of the people. So the purpose of this norm is aimed at the welfare of the people, so as a consequence of legal certainty and justice throughout the land given and the Rights for Building to the subject right has fulfilled the purpose of land acquisition, as long as it is also the presence of Rights for Building must be maintained.
c. Throughout the clause "... as well as the state of the buildings ...” What State of buildings is referred to in this norm. If the question is a building should be in good condition. Is the building that was built 30 years ago, can still be said to be good now? In addition, by considering the development of the aesthetics of the building that is dynamic and always follow the public taste, which is constantly evolving and tend to be different, are the buildings established 30 years ago still meet the contemporary aesthetic?

The purpose of this clause is that the building should meet the standard of safety, health, comfort, and convenience for users. Standards can be found in Article 16, 17, and Article 21 through Article 32 of Law No. 28 year 2002 on Building (LN 2002-134, TLN 4247) hereinafter referred to as Law Buildings.

Throughout the clause "... the period in subsection (1) may be extended by a maximum of 20 years." As described above, the word "may" is a word that contains ambiguity. The word "may" be able to be interpreted "may be refused" or "be granted". Because it can be interpreted differently, the word "may" does not provide certainty for rights holders to obtain an extension of rights to the land. The word "may" in this case can be interpreted freely by the authorities (government officials), in a particular case may be Rights for Building that are qualified for the extended, the renewal request was rejected by the authorities because the authorities have other will, or vice versa Rights for Building which might not qualify for the extended, the application was granted because another extension due consideration by the competent authority, of which the consideration is beyond the legal and welfare. As a result, there is legal uncertainty, as an extension may not be granted such rights, is also not fair to the holders of the rights, because if it is rejected, the rights holder cannot continue the investments, so it is not appropriate to create sustainable investments referred to in Article 3 paragraph (1) g Capital Market Law.

Based on the description above, if the provisions of Article 35 paragraph (2) of Land Law is associated with the principle of legal certainty, justice and sustainable investments towards the welfare of the people, then the interpretation must always be associated with the provision of Article 2 paragraph (3) Land Law, in conjunction with provisions of Article 3 paragraph (1) letters (a, f, g), and paragraph (2) letters b and h of Capital Market Law. The provisions of these articles mean that Rights for Building is given to investments with legal certainty, equitable, and sustainable towards the welfare of the people. The provisions of Article 35 paragraph (2) on existing Land Law does not reflect the principle of legal certainty, justice and sustainable investment, because there is the word "may" in the provision. As described above, the word "may" is ambiguous, i.e. "may be refused" or "be granted" because the word "may" will cause arbitrary, because the government can interpret the word "may" appropriated with its need in terms of granting or refusing extension of Rights for Building.

To avoid arbitrary action by the government and subject to the rights, the provisions of Article 35 paragraph (2) of Land Law should be enhanced.

Meanwhile, in the event of rejection of the extension of Rights for Building, it could lead to the abolition of the Rights for Building. About the abolishment of Rights for Building set in the eighth section of Regulation 40 in 1996, ranging from Article 35 to Article 38. Article 35 paragraph (1) Regulation 40 in 1996 determine: Rights for Building void due to (a) expiration of the period specified in the decision to grant or extension of the agreement or the administration. Article 36: (1) abolition of Rights for Building over States land resulted in a States land, (2) the abolition of Rights For Building over Land Rights Management resulted in land back in control of Land Rights Management holder, (3) Rights For Building abolition of land property rights lead to the land will be back into the control of the holder of the property.

Under the terms of the articles mentioned above, it can be seen on the legal consequences if an extension of Rights for Building is rejected, namely: Rights for Building expires, the land be back into the control of the State when the Rights for Building stand on State Land, or to the holder of Land Rights Management if the Rights For Building stand on Land Rights Management , or to the holder of the property, when the Rights For Building stands on land tenure, and Limited Liability Company no longer be able to use the land as a place of business.

CONCLUSION

Based on the facts that have been presented in the above discussion, some conclusions can be formulated in response to the two problems of the studies mentioned above:

1. According to Land Law, Rights For Building extension above State Land stipulated in Article 35 paragraph (2) of Land Law in conjunction with Article 26 paragraph (1) Regulation 40 of 1996 in conjunction with Article 40 Minister Of Agrarian Regulation/Head National Land Board 9 of 1999, while the extension of Rights For Building over Land Rights Management land set out in Article 35 paragraph (2) of Land Law after obtaining the approval of the holders of Land Rights Management (Article 26 paragraph (2) Regulation 40 of 1996 in conjunction with Article 45 Minister Of Agrarian Regulation/Head National Land Board 9 in 1999). Rights for Building on freehold land is not set for the extension, but according to the provisions of Article 29 paragraph (2) regulation 40 of

1996 may be renewed by agreement between the holder of the rights and the holder of Rights For Building by new deed made by Official Land Deed and then enrolled at local Land Office.

2. Interpret the provisions of Article 35 paragraph (2) of Land Law should always be associated with land acquisition purposes referred to in Article 2 paragraph (3) of Land Law, i.e. for the maximum benefit of the people and the provisions of Article 3 of the Capital Market Law and the principle of investment objectives, including creating employment and improve social welfare.
3. In the case that Rights For Building that ends well because the rights period has expired, or because extension application is rejected, then the land will be back to the state when the land originally comes from the state land or to the holder of Land Rights Management if the land comes from Land Rights Management, and the Limited Liability Company was no longer able to use the land as a place of business. If Limited Liability Company did not get land to set up another business, it will raise other law consequence, namely: the dissolution of the Limited Liability Company, and lay off its employees, which will lead to other consequences, such as economic and social consequence.

Suggestion

Based on the conclusions mentioned above, may be made the following suggestions:

1. To Head National Land Board: Rights For Building for limited liability companies in direct investment, have been met if the land titling purposes and objectives of direct investment in the form of providing jobs to the people, the land rights including its extension should be granted, so that investment principles are met, namely the rule of law, justice, and ongoing investment.
2. The legislature (Parliament and the President), in order to realize Rights For Building providing legal certainty, justice, and sustainable for Limited Liability Company in the welfare of the people, then the provisions of Article 35 paragraph (2) of Land Law so refined into:

   -At the request of the right holder, and keeping in mind the purpose of acquisition of land used for the maximum benefit of the people and the states of buildings is eligibly used, duration of building rights in paragraph (1) is extended to the maximum duration of 20 years.

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